

**California Court of Appeal
First Appellate District, Division Four**

Church of Scientology International v. Superior Court of the State of California, County of Marin;
Gerald Armstrong Real Party in Interest

Transcript: Oral Arguments

Petition for Writ of Certiorari or Writ of Mandamus
Case #[A107095](#)

September 21, 2005
Start time: 11:00:19 Finish time: 11:23:18

JUSTICE RIVERA: All right. Calling line five. Church of Scientology vs. Superior Court

The panel in this matter is myself, I'm Justice Rivera, and Justice, Judge John Munter, who is sitting by special assignment from the San Francisco Superior Court, and as well Justice Patricia Sepulveda. As you've already been [notified](#), she is not able to be present today. However the argument will be [taped](#) in its entirety. It will be made available for her to hear and consider prior to our making a decision in this matter.

We have allotted ten minutes per side for your arguments. Mr. -- is it Moxon?

MR. MOXON: Yes, your Honor.

JUSTICE RIVERA: Mr. Moxon. Actually, before we begin, let me just make a note. I hope that Mr. Armstrong received the [order indicating that the appeal had been dismissed](#) and the only issue remaining in this case is the [petition for writ of certiorari](#) on the contempt proceedings. Okay.

So, how much of your time, if any, would you like to reserve for reply?

MR. MOXON: I think five minutes would be fine, your Honor.

JUSTICE RIVERA: Five. Okay. Um, we have read the briefs. We're familiar with the [record](#). And so I suggest that you don't spend time repeating the facts or the history, procedural history of the case, and that just proceed to your arguments.

MR. MOXON: Very good. May it please the court. I am counsel to the Church of Scientology International who has been the victim of hundreds of violations of a [permanent injunction](#) by Mr. Armstrong. Mr. Armstrong is a man who has three times been found in criminal contempt for violations of these court orders and violations of the court's injunctions.

But because the law was not enforced, because these injunctions were not enforced for a period of several years and Mr. Armstrong had fled the jurisdiction, he has been now emboldened to state even in his, his opposition papers, and state in his own words that he vows to continue to violate the court's orders. He vows to continue to breach the injunction indefinitely into the future. Even suggesting that since the court is not going to enforce the sanctions against him, the criminal penalties against him, not going to enforce the contempts against him, that he is suggesting that well perhaps the best thing to do is to renegotiate a new agreement and pay him some more money.

But we cannot have a court system where the courts will refuse to enforce the orders, the final orders of other judges. We can't have a court system where this system essentially encourages a form of anarchy

by a contemnor.

I believe that the [discharge](#) of the final orders by Judge Duryee was without jurisdiction. She didn't have jurisdiction to issue those orders. She didn't have jurisdiction to discharge them. She didn't have jurisdiction to combine them with the, with the civil judgments against Mr. Armstrong. And therefore the ah, her orders simply must be reversed. It's --

JUSTICE RIVERA: Let me ask you a couple of questions. First is, we know that there is some authority for granting a remission of a contempt sentence. And Mr. Armstrong argues that he is in a position to be the recipient of such a remission. How do you respond to that?

MR. MOXON: He didn't argue that below. There was no remission by the court. That was not an issue that is presented here. It can't be presented the first time in appeal. And the authority that there is in the Vernon case for allowing a remission is where there's, where there's good cause. There was no cause shown for a remission below. Absolutely none. He appeared after years of having been out of the jurisdiction. Admittedly.

Because the orders were being enforced the instant?

And he did absolutely nothing to, to warrant a remission, even if it had been before the court. But it simply wasn't. But certainly he's met none of the requirements indicating that, that he's entitled to a remission. Indeed, his, his ah, well arrogance in saying "I'm thumbing my nose at the court. Now as far as I'm concerned, I don't have to comply with, with the court's rulings. I'm going to continue to violate it." Hardly ah, bespeaks of a situation where a remission is appropriate. Again, even it was before the court.

JUSTICE RIVERA: The second question I have, is um, on the third contempt, the court sentenced -- fined him a thousand dollars concurrent with the judgment. I'm assuming that means included in the five hundred thousand dollar judgment.

MR. MOXON: I think that's right.

JUSTICE RIVERA: And you say she has no jurisdiction to do that?

MR. MOXON: That's right. She doesn't. Because the criminal contempt is completely different than the compensatory damage award. You cannot -- there's a number of cases that we've cited indicating you can't combine the two. You can't, ah, you can't fine someone civilly in a criminal proceeding, and you can't allow the civil proceeding to, in a sense, pay for a contempt against the court. The party that's been victimized in a sense by the contempt is the court itself. And by the payment, or the award of a payment, for civil damages to the civil party obviously doesn't pay the court the fine. Obviously it has nothing to do with the incarceration that's been issued.

JUSTICE RIVERA: Is it, is it? Isn't it true that the parties agreed that the two proceedings would be [heard together](#)?

MR. MOXON: Ah, heard at the same time. Now that was sprung on them of course at the, at the day of the trial. The court announced that they would be heard together. The court had the, had the authority to do that, to hear them together. But that doesn't mean that they're heard together for the purposes of combining the judgments. You can't combine a civil and a criminal judgment. Whatever Judge Duryee thought because she had been assigned the case, and told the parties that morning she had been assigned the case -- that has no affect on her ability to say, "Okay, now I'm gonna throw out this criminal contempt because you've been hit with a damage award in a civil case." They're apples and oranges, and they don't mix.

JUSTICE RIVERA: Do you challenge her authority to um, to deem the jail time served on the third contempt by Mr. Armstrong's appearance in court?

MR. MOXON: Absolutely. Appearance in court is not jail time. Appearance in court is an appearance

in court. He ah, as I indicated, he fled the jurisdiction for years. He never served a day of jail time. You know, when you -- you know, many times a person is held in temporary custody pending a trial. And that would be time served. But there's been no time served here.

In any event these were final judgments. She absolutely did not have the authority to deem time served for the final judgments of Judge Smith and, and the other judge.

JUSTICE RIVERA: There hadn't been a sentence at that point --

MR. MOXON: There most certainly had.

JUSTICE RIVERA: The underlying contempt had been adjudicated but no sentence had been imposed.

MR. MOXON: Ah, that's not correct your Honor. Sentences had been imposed.

JUSTICE RIVERA: On the third contempt?

MR. MOXON: Not on the third. But on the first two --

JUSTICE RIVERA: No, I'm talking about the third contempt only right now.

MR. MOXON: The third contempt? It's an interesting question. I've been grappling with that one myself. What could she have done? She could have issued any ruling that she wanted to issue with respect to that third contempt. If she had said, "I've considered this third contempt. I find you in contempt and I'm not going to sentence you at all," she had the authority to do that. But she didn't do that. What she did is, "I'm sentencing you to five days. Okay? That's done. Now, that I've sentenced you to five days, I'm going to consider it time served because you're here today." It's too late to do that.

JUSTICE RIVERA: Is there authority directly on point saying that there is, there is no ability of a judge to deem the time served?

MR. MOXON: I haven't seen any. But I know that there is clear authority that we have cited to the court indicating that she didn't have the authority to alter the prior contempt.

JUSTICE RIVERA: No, I'm talking about the third contempt now.

MR. MOXON: Third contempt. I -- no I haven't found anything. I don't know what she could have done on that. Ah, I'm saying it makes sense because she's combining the civil and the criminal that she didn't have the authority to do it. But honestly I don't know. You know as to the third contempt it's probably a, ah, you know, it's, it's an odd twist in an odd case.

JUSTICE RIVERA: Okay, thank you.

MR. MOXON: I don't know.

MR. ARMSTRONG: Your Honor, I appreciate the opportunity to be here. And I have come here along with my wife from Canada in large part to let you know that contrary to what Scientology says, I am not a fugitive. I'm here and I've never been a fugitive. I left California before any of these contempts. Or rather, before any of the convictions on the contempts.

The first contempt I think really is an extraordinary where, while I was in the process of leaving, I received a subpoena for production of documents in a federal case. The following day I received a letter from Scientology's attorney threatening me with prosecution should I produce those documents.

JUSTICE RIVERA: Mr. Armstrong, the time has long since run for you to challenge the adjudication of the underlying contempt. That, that had to take place a long time ago. So, I'd appreciate your addressing these other issues that are raised by ah, the petitioner which are whether the thousand dollar fine can be combined with the civil damages and whether the trial court had jurisdiction to um alter the sentences that were imposed by the first judge in the first two contempt proceedings.

MR. ARMSTRONG: As Scientology has itself said, your Honor, the court has the power, the authority to remit such sentences if there is good cause, if there are grounds. Now, the court obviously believed that there were grounds. In fact there is a, an indication in the record at [page 58](#) of the trial transcript where she -- where Scientology's lawyer says that, oh, he says my only excuse is that I allege a conspiracy between Scientology and former Marin Superior Court Judge Thomas. And she says, "No, he has other reasons than that." Something to that effect.

There would have been a discussion of the circumstances or the mitigating factors except that that was not necessary at the time, if there -- because she simply either remitted or discharged. If there remains a question as to whether or not such factors exist then, as your Honor noted, I did indeed list a number of what I believe are very profound factors which mitigate those sentences.

So if there exists a question of fact, that court is the trier of fact. And I would ask that this be sent back to the, to the Marin court to see whether or not there are mitigating factors. What are the mitigating factors? I believe that I have a right in arguing such mitigating factors to bring up the religious argument, which to me is what this case is all about. Scientology analogizes my contempts to ah, a car dealership. It analogizes itself to a [car dealership](#) and analogizes me to an automobile arson, arsonist, which I think is, is ridiculous. By law, by United States law, I am encouraged in fact to do what I do.

I have the same religious rights. This is a religious persecution case. My communications are my religious expression. They can't be otherwise. They are about a religion.

JUDGE MUNTER: Excuse me. Let me ask you, is this what you are saying? On the remission, there was no evidence before the trial judge of good cause, ah for the remission, but that you didn't have a fair opportunity to present a good cause showing?

MR. ARMSTRONG: No, your Honor. What I'm saying is, Mr. Moxon said, "Well I didn't make a motion." She remitted. There was no discussion up to that point. Or, she discharged. If she had said, "Okay, let's talk about these sentences now." Because she [reserved judgment](#) about those right at the beginning of the trial. And if there was, then certainly I would have had the opportunity right there to present what are the mitigating factors. And I believe that if there exists right now a controversy on whether or not such mitigating factors exist, then it should go back to the Marin trial court and I would be glad at that point to put on the facts and to put on a legitimate defense of those contempts.

JUSTICE RIVERA: Mr. Armstrong, my, I am gathering that your good cause for remission is substantially identical to the defense you presented for the contempts.

MR. ARMSTRONG: Not at all, your Honor.

JUSTICE RIVERA: -- religious persecution, that this was, should-- it was supposed to be a bilateral contract, and it was only enforced unilaterally and a number of other arguments of that nature.

MR. ARMSTRONG: Well, it certainly would have included those things, because it is one 23-year history of persecution by the Scientology organization. So the whole history potentially could have come in. The fact that these alleged contempts happened largely outside the United States, where I am completely protected by another set of laws and by international human rights charters.

Scientology is not here for the purpose that they claim, to uphold the dignity of the court. I listed a series of very serious misrepresentations to this court and to the other court that Scientology has stated in order to be here, in order to get me thrown in jail. This is not an organization which in so doing, in lying about me, or lying about the procedure is upholding the dignity of the court. It simply is not true. If there is any, if this court believes that there is any real legitimate reason for sending me to jail, then I ask for understanding and I ask for mercy. Scientology will not just --

The record I think also is very clear. Scientology attorney Andy Wilson states that he wants me in jail so that Scientology can [get satisfaction](#). That's not a purpose allowed by law. They are not here to uphold the dignity of this court or the justice system or the Marin court. And I would ask your Honor, to really -- I appreciate that you have studied this record. I, I think, you know, I think that a studying of

the record will indicate that a true gigantic miscarriage of justice has occurred that went back to Judge Thomas in 1995. And it is only through my slogging against tremendous odds that finally I got that judgment of unconscionability. And I think that that in itself, because she did link those things, to finally declare that contract unconscionable, I believe is a mitigating factor of enormous magnitude.

JUSTICE RIVERA: Well Mr. Armstrong, the judge didn't find the contract unconscionable. The judge found that any amount of liquidated damages exceeding eight hundred thousand dollars would be unconscionable.

MR. ARMSTRONG: She [found](#) that punishment beyond the benefit that was conferred on me to be unconscionable, and this is most definitely punishment beyond the eight hundred thousand.

JUSTICE RIVERA: That was not -- I don't think that that was the court's finding. But let me ask you a different question and that is, my understanding of the law is that remission occurs if the compliance with the court's order is ultimately obtained. Has there com-- has there been compliance with any of the court orders pertaining to this settlement agreement?

MR. ARMSTRONG: Uh, it, compliance your Honor is literally impossible. Do you know that if you look at both the judgment and if you look at the contract, I am not permitted to be here today. Judge Thomas originally interpreted and enforced the contract based on what was included within the four corners of that contract. It does not permit me to be here. It does not permit me to file lawsuits against Scientology because necessarily I must discuss Scientology in, to be here. I am not compelled by subpoena. And how could that contract possibly be lawful when it requires that I not make myself be amenable to subpoena, when it requires that I not communicate, even to courts or to government, government agencies. That contract prohibits me. Who in their right mind -- and that comes down to the unconscionable -- the [definition](#) of an unconscionable-- unconscionability and unconscionable contract. And that is, who in their right mind, not deluded, would sign such a contract. And who but someone unfair and seeking injustice would present such a contract for signing. I was forced, literally forced to sign that contract. I had no chance. And I knew at the time, because I had litigated against this organization, and because I had been fair game for five years up to that time, and because I am a religious class. They have made me a religious class, the [Suppressive Person](#). It is an absolutely abhorrent, shocking condition to be in. The threat never ends.

They have, at this very minute, they have an agent across the street from me who has run an operation on me for over a year now. Literally across the street. Do you know that according to the contract, I can't even say the name "Tom Cruise." If I say, "Tom Cruise's movie was lovely" he is a [beneficiary of this contract](#) -- I go to jail and fifty thousand dollars? The whole thing is madness, and it really has to stop. I ask this court. You know--

JUSTICE RIVERA: Mr. Armstrong? Your time is expired.

MR. ARMSTRONG: Okay. Thank you, your Honor.

MR. MOXON: Very briefly, your Honor, some of the arguments you've heard today have been made for a decade. They've been adjudicated. They've been resolved. They're all res judicata. Notwithstanding the fact that they're not accurate. For example, Mr. Armstrong is certainly able to file litigation. He filed a lawsuit for purported defamation in the US District Court in Nevada and [that case](#) was litigated there. There's no issue as to whether or not he can, he can do what he's done.

The court did not remit. There is no, there is no order of remission by the court below. I think that that's an issue that's a bit of a red herring. That's, that's not an issue in this case. It didn't say that it had remitted. There were no arguments on a remission as the court pointed out-- pointed out. There would be some requirement to demonstrate that a party had complied with an order or that it was unfair.

Mr. Armstrong took money in this contract. He spent the money and he says, "Now I don't want to have to comply with it because I think it's unconscionable. I'm going to keep the money and I'm going to continue violating the contract as much as I please."

That's been adjudicated against him. Many times.

The purpose of this is not to throw him in jail. The purpose is to gain compliance with the injunction. If he wanted to pay it back, just as counsel said below in the trial, if he wants to pay the money back, he can do whatever he wants. I'd be very happy to vacate this and get out of court. I don't want to have to be here any more.

But the fact of the matter is, it's been adjudicated, and something has to, some reason has to follow the rule of law that the court's orders must be complied with, they must be enforced, and until they're enforced, I don't know what it will take to gain compliance with him. Thank you.

JUSTICE RIVERA: Thank you. The matter is submitted.

A CD audio recording of oral argument in [this case](#) was obtained from the [Clerk](#) of the [First District Court of Appeal](#). This unofficial transcription was made by [Caroline Letkeman](#) on September 30, 2005. [\[top\]](#)

§ [What's New](#) || [Search](#) || [Legal Archive](#) || [Wog Media](#) || [Cult Media](#) || [CoW](#)® || [Writings](#) || [Fun](#) || [Disclaimer](#) || [Contact](#) §